

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4541 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GODAR DEVRAJ CHARAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. Nigam Shukla, learned Addl.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/10/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 8-4-96 passed by the District Magistrate, Jamnagar detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order dated 8-4-96 was executed on 20-4-96 and since then the petitioner is under detention

lodged in Bhavnagar District Jail, Bhavnagar.

2. This Special Civil Application was filed on 1-7-96 and on 2-7-96 Rule returnable by 2-8-96 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that as many as 12 cases under the provisions of Bombay Prohibition Act were registered against the petitioner at Police Station, Lalpur, out of which 9 cases are pending in the Court and in 3 cases the police investigation was going on at the time when the detention order was passed. After noticing the allegations against the petitioner in the aforesaid criminal cases, the detaining authority has mentioned that the petitioner was a head strong person and the person and property of the innocent people was not safe in the area because of the petitioner's anti social activities and the petitioner was engaged in the unauthorised business of manufacturing and selling the country liquor. In support of the petitioner's violent activities of pressurising the witnesses to co-operate with him in the bootlegging activities and the business of unauthorised sale of liquor, statements of 4 witnesses have been recorded with regard to the incident dated 21-12-95, that the witnesses did not report against the petitioner because they were afraid and frightened of him. The detaining authority has satisfied himself that the petitioner was a bootlegger and was engaged in anti social activities and was giving beating to the innocent people and the proceedings of externment in the instant case will not be expedient and will not be sufficient to prevent the petitioner from carrying on his anti social activities and, therefore, it was necessary to detain the petitioner under the provisions of the Act.

4. The detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has laid stress on the ground that the allegations and materials against the petitioner, as has been relied upon by the detaining authority, even if taken to be true on its face value do not constitute a case of breach of public order and at the most it is a case of law and order. The allegations and materials, as has been relied upon in the present case, were considered in detail in the recent judgment pronounced by this Court on 4-10-96 in Special Civil Application No.3879 of 1996 wherein a considered view had been taken on the basis of the ratio of various cases on the point decided by the

Supreme Court and this Court that such allegations do not make out a case of breach of public order. The grounds of law and order stand on a different footing than that of the grounds of breach of public order and the grounds of law and order can not be said to be germane for passing of the detention order in absence of the allegations showing a case of breach of public order. Accordingly it is held that the allegations and materials relied upon in the present case do not constitute a breach of public order.

5. Accordingly this Special Civil Application is allowed. The impugned detention order dated 8-4-96 passed by District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.